



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WA 35/2022

1: Milorai Modi
S/o Late Tonak Modi,
Presently serving as Principal, Jomin Tayeng Govt. Model Degree College, Roing,
Lower Dibang Valley District, Arunachal Pradesh 792110

VERSUS

1: THE STATE OF AP and 4 Ors.
Represented by the Chief Secretary, Govt. of Arunachal Pradesh, Itanagar 791111

2: The Arunachal Pradesh University
Pasighat
Arunachal Pradesh

Represented by the Commissioner (Education)
Govt. of Arunachal Pradesh
Itanagar 791111

3: The Honble Chairman
Search Committee for the post of Vice Chancellor
Arunachal University
Pasighat
Arunachal Pradesh
represented by the Chief Secretary
Govt. of Arunachal Pradesh
Itanagar 791111

4: The Commissioner (Education)
Govt. of Arunachal Pradesh
Itanagar 791111

5: The Director

Higher and Technical Education
Govt. of Arunachal Pradesh
Itanagar
79111

BEFORE
HONBLE MR. JUSTICE KALYAN RAI SURANA
HONBLE MRS. JUSTICE MITALI THAKURIA

For the appellants : Mr. Indraneel Chowdhury, Senior Advocate,
: Ms. Nikita Danggen, Mr. Sandeepjoy Biswakarma,
: Mr. Oken Duggong, Mr. P. Siga, Mr. Y. Digiam,
: Mr. Honi Tana Tara, Advocates.

For the respondents: Mr. Kardak Ete,
: Advocate General, Arunachal Pradesh,
: Mr. Tagum Jamoh, S.C., Education.

Date of hearing : 29.11.2022 and 30.11.2022.
Date of judgment : 04.01.2023.

JUDGMENT & ORDER

(C.A.V.)

(Mrs. Mitali Thakuria, J)

Heard Mr. I. Chowdhury, learned Senior Counsel, assisted by Ms. N. Danggen and Mr. S. Biswakarma, learned counsel for the appellant. Also heard Mr. K. Ete, learned Advocate General, assisted by Mr. T. Jamoh, learned standing counsel for the respondents.

2. This intra court appeal is directed against the judgment and order dated 19.10.2022, passed by the learned Single Judge of this Court in W.P.(C) 361(AP)/2022, thereby dismissing the writ petition.

CASE OF THE APPELLANT IN THE WRIT PETITION:

3. The Director of Higher & Technical Education, Govt. of Arunachal Pradesh (respondent no. 5) had issued an advertisement dated

03.08.2022, inviting applications for filling up the post of Vice Chancellor of Arunachal Pradesh University. The last date for submissions of application was on or before 03.09.2022. It was required that the applications should be sent by e-mail with documents in the attachment file. Accordingly, the appellant had purportedly sent his application by e-mail on 31.08.2022. The said application was followed by appellant's another e-mail dated 02.09.2022, containing two documents in the attachment file. However, as the application of the appellant were not forwarded by the respondent nos. 4 and 5 to the Search Committee, by filing a writ petition, the appellant had prayed for directing the respondent nos. 4 and 5 to scrutinize the application of the appellant and forward the same to the Search Committee.

STAND OF THE RESPONDENTS BEFORE THE LEARNED SINGLE JUDGE:

4. The stand of the respondents was that the e-mail sent by the appellant on 31.08.2022 contained no attachment for which his testimonials could not be downloaded and examined and therefore, such application could not be forwarded to the Search Committee.

REASONS AND DECISION OF THE LEARNED SINGLE JUDGE:

5. The learned Single Judge, was of the considered opinion that the only matter that was to be examined was whether the e-mail of the appellant contained the requisite attachments. Therefore, as agreed to by the learned counsel for the appellant and the learned standing counsel for the respondents, the learned Single Judge requisitioned the service of the System Analyst of this Court to check whether the e-mail sent by the appellant on 31.08.2022 contained attachment consisting of filled up application in the prescribed format along with testimonials.

6. Accordingly, in the presence of the learned counsel for the

parties, the System Analyst of this Court along with an U.D.C. of the Education Department had checked the e-mail sent by the appellant on 31.08.2022 in the e-mail address "vc-apu@arn.gov.in". However, on verification, it was found that the said e-mail did not contain any attachment i.e. filled-up application in prescribed format along with supporting testimonials.

7. Accordingly, the learned Single Judge held that the application could not have been forwarded as the e-mail contained no attachment. It was further held that the subsequent e-mail dated 02.09.2022 only contained three documents, viz., no objection certificate and two paper publication made by the appellant, which was rejected by the Search Committee as the same was not in conformity with the advertisement dated 03.08.2022. Hence, the learned Single Judge concluded that no direction can be given to the respondents for evaluation of the application of the appellant and resultantly, the writ petition was dismissed.

SUBMISSIONS MADE BY THE LEARNED SENIOR COUNSEL FOR THE APPELLANT:

8. The learned senior counsel had submitted that the purpose of advertisement by the respondents was to broaden their search for suitable, eligible and best person to be appointed as the Vice Chancellor of Arunachal Pradesh University, and painstakingly, the qualifications and educational achievements of the appellant was highlighted. To show the object of advertisement, reliance was placed on the case of *Liladhar v. State of Rajasthan & Ors.*, (1981) 4 SCC 159 (para-4), which was reiterated in the case of *Ramjit Singh Kardam v. Sanjeev Kumar*, (2020) 20 SCC 209 (para-46). Para- 4 of the case of *Liladhar (supra)* is quoted below:-

"4. The object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and

favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So, open competitive examination has come to be accepted almost universally as the gateway to public services.

"The ideal in recruitment is to do away with unfairness" (United Nations Handbook on Civil Service Laws and Practice).

Competitive examinations were the answer to the twin problems represented by democracy and the requirements of good administration. They were the means by which equality of opportunity was to be united with efficiency... By this means favouritism was to be excluded and the goal of securing the best man for every job was to be achieved" (Public Personnel Administration by O. Glenn Stahl).

"Open competitive examinations are a peculiarly democratic institution. Any qualified person may come forward. His relative competence for appointment is determined by a neutral, disinterested body on the basis of objective evidence supplied by the candidate himself. No one has "pull"; everyone stands on his own feet. The system is not only highly democratic. it is fair and equitable to every competitor. The same rules govern, the same procedures apply, the same yardstick is used to test competence" (Introduction to the study of Public Administration by Leonard White)."

9. It was submitted that the respondent authorities had received the e-mail of the appellant and therefore, if it did not contain the attachment, the respondent authorities could have informed the appellant about the lack of requisite attachment in the appellant's e-mail, which would not have caused any prejudice to anyone and would not have been unfair to anyone. To support his submission, reliance was placed on the case of *Ramana Dayaram Shetty v. International Airport Authority of India & Ors., (1979) 3 SCC 489*. Relevant part of para-10 and 21 thereof, relied upon are quoted below:-

"10. *...It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. ...*

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21. *This rule also flows directly from the doctrine of equality embodied in Art. 14. It is now well settled as a result of the decisions of this Court in E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3 and Maneka Gandhi v. Union of India, (1978) 1 SCC 248 that Article 14 strikes at arbitrariness in State action and ensures*

fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory: it must not be guided by any extraneous or irrelevant consideration, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory. ..."

10. It was also submitted that the "so called" consent given by the learned counsel for the appellant before the learned Single Judge would not amount to waiver of fundamental right of the appellant to maintain the present challenge. In the said context, the case of *Behram Khurshid Pesikaka v. State of Bombay*, AIR 1955 SC 123 (para-52) was cited.

11. The learned Advocate General has opposed the maintainability of this writ appeal. By relying on the case of *S. Thilagavathy v. State of Tamil Nadu & Ors.*, (2011) 6 SCC 365 (para 11 & 12).

12. It was also submitted that even by applying the principles of fair-play and equity, it was not permissible for the respondent authorities to (i) download the applications, (ii) to open the attachments, if any, and (iii) to examine and evaluate the correctness of the applications and/or documents received by them before the expiry of the last date of submission and before the process of examination of application is actually undertaken. In this regard, reliance was placed on the case of *Bedanga Talukdar v. Saifudaullah Khan & Ors.*, (2011) 12 SCC 85 (para 29-32). It was submitted that although he does not dispute the ratio of the cases cited by the learned senior counsel for the appellant, but those cases are not the authority on the point that any duty is

cast on the officials of the prospective employer to inform the applicant about the deficiencies, if any, in his/her application for employment. By referring to the minutes of the meeting of the search committee, held on 20.09.2022, which is appended to the affidavit-in-opposition filed by the respondents, the learned Advocate General had submitted that if the respondents would have communicated with the appellant, it would have caused injustice to two other aspirants for the post of Vice Chancellor, whose applications were also defective and therefore, found not eligible.

REASONS AND DECISION:

13. At the outset, we fully agree with the approach of the learned Single Judge to have the e-mail of the appellant examined by System Analyst of this Court. We do not find any fault with the said action. Every Court has the inherent power to have anything examined by experts to arrive at the truth. The sole purpose of adjudication by a Court of law is to arrive at the truth. Therefore, even if the learned counsel for the appellant had not given her consent, it was still permissible for the learned Single Judge to have the e-mail of the appellant examined to find out the truth as to whether or not the e-mail dated 31.08.2022 submitted by the appellant contained his dully filled-up application in prescribed format as well as his testimonials in PDF format, as per advertisement. The power of the Court to make an enquiry can be traced to the following, viz., (i) Sections 45 to 51 of the Evidence Act, 1872; (ii) Order XXVI, Rule 2 CPC; (iii) Sections 310, 311 and 398 of the Criminal Procedure Code. We have also noted that under Chapter V-A of the Gauhati High Court Rules, a writ petition is under "Revisional Jurisdiction" (see Schedule thereto and Rule 1). Therefore, the writ Court has unfettered inherent power to get the e-mail of the appellant examined as it was the fulcrum of the case of the appellant before the learned Single Judge.

14. The case of *Behram Khurshid Pesikaka (supra)*, cited by the learned senior counsel for the appellant would not help the appellant in any manner. The reason is that the said appeal was from a judgment of the Bombay High Court, reversing the order of acquittal passed in favour of the Appellant by the learned trial Court and convicting him of an offence under Section 66(b) of the Bombay Prohibition Act, 1949 and sentencing him to one month's rigorous imprisonment and a fine of Rs. 500/-. In the context of a criminal prosecution, the Supreme Court of India had observed that they were not able to subscribe to the view that in a criminal prosecution it is open to an accused person to waive his constitutional right and get convicted. A reference was made to Cooley's Constitutional Limitations (Vol.-I., pg. 371), wherein it was mentioned that a party may consent to waive rights of property, but the trial and punishment for public offences are not within the province of individual consent or agreement. Therefore, when this Court has the power to have the e-mail examined, which does not have criminal consequences, the consent given by the learned counsel for the appellant would bind the appellant. Nonetheless, as this Court, while entertaining a writ petition has inherent power and jurisdiction to find out the truth, had ordered examination of the e-mail, the consent so given by the learned counsel for the appellant before the learned Single Judge is of no consequence and did not prejudice the appellant because we are not dismissing this appeal on the said ground, although we could definitely have dismissed it on that count alone. The appellant having approached this Court by filing writ petition, was definitely not under the impression that the Court will not make the necessary endeavour to find out the truth, because if he had that kind of an idea, it would be sufficient for the Court to draw a presumption that the petitioner had approached the Court with unclean hands with clear intention to mislead the Court.

15. Therefore, in our considered opinion, the learned Single Judge had rightly got the e-mail examined, which led to discovery that the appellant's e-mail was bereft of any attachment. Thus, we are constrained to hold that we do not find any merit in this appeal. In the said context, we would like to refer to the decision of the Supreme Court of India in the case of *N. Ramachandra Reddy v. State of Telengana*, (2020) 16 SCC 478: AIR 2019 SC 4182, where it has been held that while considering intra court appeal, unless the appellate Bench concludes that the findings of Single Judge is perverse, it shall not disturb the same.

16. We do not find any merit in this appeal. Yet, we are proceeding to still consider the submissions painstakingly made by the learned senior counsel for the appellant. We are doing so in the light of the decision of the Supreme Court of India in the case of *Raghubir Singh v. State of Rajasthan*, (2019) 17 SCC 408, wherein it was held that it was incumbent upon Division Bench to deal with all issues urged and record its finding.

17. We have perused the meeting of the search committee, held on 20.09.2022, which is appended to the affidavit-in-opposition filed by the respondents. Out of the several applicants, (a) two professors were found not eligible on the account of over-age (above 65 years on the last date of application); three professors were found not eligible on the account of not meeting the minimum criteria of 10 years of professorial experience as on the last date of application; three applicants including the appellant were found not eligible on account of submission of incomplete or blank proforma (prescribed format) or not submitting any proforma; and one professor was found not eligible on account of sending application after the closing date. We have refrained from disclosing the names of the various applicants other than the

appellant, as it may irreparably prejudice them and moreover, their applications are not the subject matter of adjudication in this appeal. Therefore, when the respondent authorities in the employment advertisement had not reserved right to communicate with the applicants, in the event any deficiencies were found in their application, we cannot find fault with the respondent authorities for (i) not downloading the applications before the opening date; (ii) not perusing and/or scrutinizing the contents of various applications and documents filed before the opening date; not communicating with the appellant and other applicants for the purpose of informing them that their applications were deficient in any way; and permitting the deficient applicants for supplementing their deficient applications by substituting documents so as to remove the defect. In the absence of such power reserved in the advertisement, such an exercise would be preposterous.

18. Moreover, in this case in hand, there were limited applicants, but what would the authorities do if the applicants for a particular post would be in hundreds or thousands, and in UPSC examination, applicants are in several lakhs. Therefore, if we accept the contention of the learned counsel for the appellant, we would be burdening all prospective employer and/or authorities conducting examinations an additional burden of responding to each application. Therefore, under the facts of this case where the employment advertisement did not envisage communication from the respondent authorities to the prospective applicants, we hold that the respondent authorities were neither obliged nor required to inform the appellant that there was no attachment to his application.

19. We may refer to the decision of the Supreme Court of India in the case of *State of Bihar & Ors. v. Madhu Kant Ranjan & Anr.*, 2021 SCC OnLine

1262 (para 16), where it has been observed as follows:-

"16. As per the settled proposition of law, a candidate/ applicant has to comply with all the conditions/eligibility criteria as per the advertisement before the cut-off date mentioned therein unless extended by the recruiting authority. Also, only those documents, which are submitted alongwith the application form, which are required to be submitted as per the advertisement have to be considered."

20. Moreover, we are also of the considered opinion that even under the principles of fair-play, equity and good conscience, the said principles would not permit the respondent authorities to do what is proposed by the learned senior counsel for the appellant, i.e. (i) to download the appellant's application before the opening date; (ii) read its contents before the opening date; (iii) scrutinize and/or evaluate the application and documents before the opening date and find out as to whether or not the application is deficient in any manner; (iv) before the opening date, to invite the appellant or any other deficient applicant to meet the deficiencies by providing the requisite documents as mentioned in the advertisement, and (v) to make such document as a part of the application. Such an exercise is not permissible in the absence of such a condition in the advertisement. None of the decisions cited by the learned senior counsel for the appellant is an authority on such proposition. Rather, the case of *Bedanga Talukdar (supra)*, relied upon by the learned Advocate General, the Supreme Court of India has laid down that the power to relax must be disclosed in the advertisement. Therefore, the said submissions made by the learned senior counsel for the appellant cannot be accepted, as it would amount to give a premium to a person who may casually and/or intentionally submit defective applications, tenders, etc., to be informed to cure the deficiency or shortfall. Therefore, whether or not any other person would suffer any loss or prejudice is of no consequence.

21. There is no doubt that the purpose of advertisement for

employment is to seek best person to be selected for holding public office. There is no quarrel with the ratio of the cases cited by the learned senior counsel for the appellant. But when the intention is to select the best eligible and competent person and again with all respect, when we find that the appellant had casually sent his e-mail, without attachment of his application or documents, it cannot be said that by excluding the candidature of the appellant, any wrong was committed by the respondent authorities, specially respondent nos. 4 and 5 in not forwarding the appellant's application to the Search Committee. We do not find that this is a case where the respondent authorities had acted unfairly towards the appellant, or that any of their actions were arbitrary, whimsical and in blatant misuse of power and authority.

22. Therefore, the Court is of the considered opinion that this appeal does not have any merit and is liable to be dismissed. Accordingly, we pass the following:

ORDER

23. In light of the discussions above, this appeal fails on all counts and therefore, this writ appeal stands dismissed. However, there shall be no order as to cost.

24. Interim order passed on 09.11.2022 stands revoked forthwith. In other words, the respondents are now at liberty to finalize the process for selection for the post of Vice Chancellor of Arunachal Pradesh University.

JUDGE

JUDGE.